IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ERIC L. JEFFRIES,

Plaintiff,

vs.

CENTRE LIFE INSURANCE CO., et al.,

Defendants.

CASE NO. C-1-02-351

Deposition of: MICHAEL F. HARTINGS, Ph.D.

Pursuant to: Notice

Date and Time: Monday, October 27, 2003 9:55 a.m.

Place: Graydon, Head & Ritchey, LLP
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MICHAEL F. HARTINGS, Ph.D.

a witness herein, having been duly sworn, was examined and deposed as follows:

EXAMINATION

BY MR. ROBERTS:

Q. Dr. Hartings, my name is Mike Roberts. I represent Eric Jeffries. Mr. Jeffries is a plaintiff in a lawsuit pending in the United States District Court, Southern District of Ohio, Case Number C-1-02-351.

Could you please state and spell your name and your residence address, please, sir?

A. My name is Michael F. Hartings, H-a-r-t-i-n-g-s. My residence is 135 Francis Ridge Drive, Cincinnati, 45238.

Q. And how are you presently employed?

A. As a psychologist at Riverhills Healthcare in Cincinnati.

Q. Do you have any ownership in that entity?

A. Yes.

Q. What is your percent ownership in that entity?

A. 1/15, probably, or thereabouts. I'd have to count up how many doctors we have.

Q. You were kind enough, sir, to fax to me a

resume last week. It's marked as Exhibit 77. Could you take a look at that for me and confirm that this is a curriculum vitae of yours?

A. It is, yes.

Q. Where did you receive your neuropsychology -- is that the way you say it -- neuropsychology training?

A. Yes.

Q. Where did you receive that?

A. Well, I received my initial training in neuropsychology and my internship at Rush-Presbyterian-St. Luke's Medical Center in Chicago in 1966, '67.

Q. Is that reflected on your resume?

A. The internship should be. Yes, it's the first thing on page 3.

Q. The Collateral Training and Experience section?

A. Right.

Q. Or the staff appointments, page 2 of your curriculum vitae, right? Page 3 of the exhibit, page 2 of your vitae?

A. Well, this is page 1, page 2. It says page 2 on the top of this, yes.

Q. Where it says Collateral Training and

Experience?

A. Right, the very first entry there.

Q. This is where you received neuropsychology training?

A. I received training in neuropsychology as part of my internship.

Q. Tell me about the scope of that.

A. Well, at that time, in 1965, neuropsychology was not yet a subdiscipline of the field of psychology, so there was no formal training available. The training that was available was on an incidental basis, case by case.

So we were fortunate to have a neuropsychologist there, one of the early ones, and I trained with him in the examination of brain-injured individuals.

Q. For that entire internship period?

A. No. As I recall, there may have been four or five cases that I saw during that year.

Q. Okay.

A. Which at the time would have been a lot for anyone in the field of neuropsychology.

Q. What's a neuropsych IME?

A. Well, an IME is an independent medical examination, and that is a evaluation of a condition of

a patient from any number of perspectives, whatever is the focus of inquiry. I put neuropsychological behind it in order to specify that it is an IME which focuses on the neuropsychological aspects of the patient's condition.

Q. Have you shared with me all of your formal training in neuropsychology?

A. No.

Q. Okay. What else has been your formal training in neuropsychology?

A. Well, in 1973, when I was on staff at Rush-Presbyterian-St. Luke's Medical Center, I became involved in the evaluation and treatment of persons with multiple sclerosis, and for that purpose took the training that was then available in neuropsychology by virtue of continuing medical education from a variety of neuropsychologists around the country.

Q. Are there certificates or any documents that reflect that anywhere that you received?

A. From 1973?

Q. Yes, sir.

A. I don't have them anymore.

Q. Okay.

A. I would have received CEU credit documentation, but I haven't kept that.

Q. I interrupted you, I'm sorry. Go ahead.
A. And that prepared me to assume the position of associate director of the multiple sclerosis center at Rush Medical College, which was the first in the nation.
Q. Is that reflected here or not?
A. I don't know. Probably -- it would have been during the time that -- of employment at Rush-Presbyterian-St. Luke's Medical Center, which begins on page 2, the second item from the bottom, during those years of '71 to '78. I just didn't add that to the list of my responsibilities.
Q. Okay. What else?
A. And then from 19 -- oh, boy -- from 1973 until 19 -- well, actually till the present -- well, let's go back. To 1973. Usually from '73 until like 1985, I took all of my CEU in the area of neuropsychology.
And the reason for that was I decided in 1978 to accept a position here with a group of physicians specializing in neurology, which was then known as Cincinnati Neurological Associates. And so I needed to know all I could about neuropsychology. And at the time that was really the only way you could get training, because there were no -- late '70s, early

'80s, maybe there were one -- Oscar Parsons had a program out at Oklahoma, but there were -- it was just a time when the specialty was beginning and there were very few formal training programs. So most of us, people my age, trained by doing their homework and attending workshops.
Q. Okay. Are you a Chicago native?
A. No.
Q. Did you spend a good portion of your early career in Chicago, then moved to Cincinnati; is that right?
A. Yes.
Q. What prompted that move?
A. I'm a native of Cincinnati. My wife is a native of Cincinnati. In 1976, when we started to consider coming back here, we had three sons. And I didn't want to have to travel an hour to go to a baseball game, I didn't want to have to inherit tickets to the Chicago symphony, and I didn't want my kids spending all summer every summer in camps, so we came back to a much more family-friendly choice.
Q. Good choice. Are you still married?
A. Yes.
Q. I have one job, and I don't have a whole bunch of appointments, but it appears that you

simultaneously hold different positions at different locations. Since coming to Cincinnati, you've worked at HealthSouth Rehab Hospital?
A. Yes.
Q. But your resume also shows that you've been working at Riverhills for an overlapping period of time?
A. Right. During my -- my practice group is Riverhills Healthcare. They do not assign us duties. I was asked to consult at HealthSouth in 1986 and -- '89, excuse me. And in 1993 I was asked to head up the brain injury rehab program, which I did for three years. And that's not on the resume.
Q. There's two references to HealthSouth Rehab Hospital on your resume, one under employment, one under staff appointments.
A. Right.
Q. You both -- you held those positions from '89 to '96?
A. Right.
Q. Are they different?
A. No. You can be on the staff without being in the employ of the hospital.
Q. Okay.
A. And you can be in the employ of the hospital

and not be on the medical staff.
Q. Okay. So you were employed for seven years at HealthSouth during the same period of time you were employed at Riverhills?
A. Okay. Technically I was an independent contractor at HealthSouth.
Q. Okay.
A. And all of the -- all of the fees that I generated through my work at Riverhills -- at HealthSouth were paid to my employer, Riverhills Healthcare.
Q. Okay. So you've actively worked for Riverhills for the 24 years since 1978 without any interruption then, I guess?
A. Correct.
Q. Is that correct?
A. That's correct.
Q. And the active work for that 25-year period, has that been as a psychologist the whole time?
A. Yes.
Q. I mean, is that the right title to you, psychologist?
A. Yes.
Q. You never left Riverhills to go to either HealthSouth or these positions and staff appointments

on page 3?
A. No, I never left Riverhills to go anywhere else.
Q. Okay. So we're clear, for the last 25 years, you've been working there as a psychologist at Riverhills, right?
A. Right.
Q. Okay. Have you ever been convicted of a crime?
A. No.
Q. How did you become involved with Boys' Hope of Cincinnati?
A. That's a program that's conducted by -- how did I become involved? I was asked --
Q. I am also involved, that's why I'm curious.
A. I was asked in, I don't know what time frame it was, the '80s sometime, to help out with the evaluation of candidates for the program. Earl Kronenberger was the psychologist involved and he was cutting back and he asked me to pick up some of it, which I did.
Q. Okay. In the Cincinnati Neuropsychology Peer Review Group, you're a founding member of that organization?
A. Uh-huh.

Q. That's a group of seven or eight psychologists in town that get together?
A. It's fluctuated. It started with three and ended with three, if it's over. It probably isn't. We still meet from time to time, but not with the regularity that we did for the first 23 years.
Q. The staff psychologist position that you held at Bethesda, Christ and Jewish, those all ran from '78 to '95. Why did you stop that?
A. Well, health care went south, as you know, especially mental health care. And the hospitals basically let go of their psychologists. They didn't want them, especially due to the turf battles with psychiatry. Psychiatry didn't want them in.
And basically I was on the staff in those hospitals because psychiatry colleagues would ask me to go there to see patients and evaluate them. And I would do that. And that pretty much ended in the mid '90s. So I didn't want to pay my money to stay on the staff.
Q. Is that why your position at HealthSouth came to a conclusion as well about the same time?
A. No. I ended that because, if you've been reading about HealthSouth lately, I suspected -- and the way they attempted to manage my service, I felt was

duplicitous at best, unethical at worst, and I simply decided I did not want to deal with those folks anymore.
Q. Okay.
MR. ROBERTS: We're off the record.
(Off the record.)
BY MR. ROBERTS:
Q. Doctor, you were also kind enough to share with me identification of testimony that you've provided in cases in the last four years, both by way of deposition and trial, I presume. And Exhibit 78 is the statement -- the identification; is that right?
A. Yes.
Q. Which of these cases referenced in Exhibit 78 are cases in which you testified at trial?
A. I really have no idea. Okay. '99, none of them. 2000, I don't remember. 2001, E. Johnson versus E.W. Scripps was a trial testimony.
Q. Do you know which court that might be in?
A. I believe -- it was in Northern Kentucky. I believe it was the Federal Court for the District of Northern Kentucky.
Q. And do you know the first name of the Johnson individual?
A. Esther.

Q. And on behalf of which party did you testify?
A. Scripps.
Q. What was the nature of the lawsuit?
A. Esther Johnson is a real estate developer in Northern Kentucky who was investigated by Eye One or Channel 9, Eye One News, whatever it is, particular reporter whose name I can't remember. And Esther Johnson thought that the reporting on her business was slanderous. And she sued the Scripps news service and this reporter in particular claiming emotional and psychic damage.
I examined her on behalf of the defendant and rendered an opinion as to her emotional and psychological condition and the effects of any -- if any, of the news report written about her.
Q. Do you recall who the lawyers were involved in that case?
A. Uh-huh.
Q. Could you share those with me?
A. I mean yes. The lawyer for Scripps Howard was Phillip Taliaferro.
Q. Do you recall who the other lawyer was?
A. I do not.
Q. How about the Paul Revere case in 2001?

Q. Okay. What thought are you conveying when you use the word disingenuous?
A. Not genuine.
Q. What does that mean, not genuine?
A. Not a --
Q. Not true?
A. Not a genuine reflection of the capacity of his musculature in the upper right extremity to perform repetitive actions.
Q. And you base that on -- so you're essentially saying he was malingering during that test?
A. If I thought he was malingering, I would say he was malingering.
Q. Okay. What's the difference between this person was malingering versus saying, my impression was this person performed disingenuously? What's the difference?
A. Disingenuous means not genuine.
Q. Okay.
A. Okay. Now, a not genuine performance can arise for a variety of reasons, not limited to malingering or falsifying.
Q. What was your impression of the cause on this instance?
A. I believe Mr. Jeffries believes that he is

impaired and he acts in accord with that belief.
Q. 69-HH, these are some more undated notes of somebody that are typewritten.
MR. ROBERTS: Mr. Ellis wants to say that he doesn't have a copy made available to him in this deposition, and he would be accurate were he to say that.
Q. Dr. Hartings?
A. Yes.
Q. Who created these notes?
A. Denise Midler.
Q. Who is she?
A. She is my office manager and psychometrist.
Q. What's that?
A. She's an office manager and she is a psychometrist.
Q. What does that mean?
A. She is trained at the master's level to administer, score psychological and neuropsychological tests, and she is a licensed social worker with the state of Ohio. She's a master's degree person.
Q. And were -- go ahead.
A. That's all.
Q. Are these notes from July 12 or from February 6?

A. Neither. No. They're from July 12th.
Q. What does she mean when she says in the second paragraph, he whined? That's fairly pejorative, don't you think?
A. That came up in Dr. Bastein's report. I think if your kids whine and you tell them they're whining, is that pejorative?
Q. Is that professional?
A. It's professional to be accurate, especially for a psychologist, and to describe behavior the way it is.
Q. So is it professional for you to say Mr. Jeffries had some chronic thing that now you want to take out of the report?
A. Since I made that remark to you I've reconsidered it, because chronic means more than six months, and --
Q. Since we took a break, you went to lunch with Mr. Ellis, you now want to leave the word chronic in your report that you were so insistent should be taken out of your report this morning?
MR. ELLIS: Objection to form.
A. Mr. Roberts, I don't care if it's in or out, frankly.
Q. I just want the record to be clear.

MR. ELLIS: Let him finish.
Q. I just want the record to be clear.
A. Mr. Jeffries' illness is as it is or isn't, and whether I call it chronic or not doesn't change the onset, date or duration of time since it has occurred. So --
Q. Very well. Now, you say in your report 301. -- is it 8 for obsessive compulsive disorder? 301.4, excuse me. And you say, well, it's kind of like that. There's nothing in the DSM-IV that specifically quantifies Mr. Jeffries' obsessive compulsive type disorder, right? Is that what you said this morning, paraphrasing?
A. The DSM combines obsessive and compulsive.
Q. Does he have 301.4, as defined in the most recent version of the DSM?
A. He has the obsessive aspects of 301.4.
Q. If he doesn't have 301.4, what does he have?
A. An obsession.
Q. What number is that in the DSM-IV?
A. All reality is not reflected in the DSM-IV. I don't think that the authors of that tome isolated obsessive neurosis as it used to be in DSM-II.
Q. Okay. So the present iteration of DSM, which

is DSM-IV, doesn't give a number for the type of obsessive disorder that you think Mr. Jeffries has?
A. Correct.
Q. Perfect. I think that's a requirement of the policy.
MR. ELLIS: Is that a question or a gratuitous comment?
THE WITNESS: I didn't hear it.
MR. ELLIS: Don't worry about it.
THE WITNESS: I can't answer it.
MR. ELLIS: It's not important.
MR. ROBERTS: It's not important.
BY MR. ROBERTS:
Q. Here's some more notes we've marked 69-II. Whose notes are these, when were they taken, what do they relate to?
A. They were taken on or immediately after his visit of February 6th, I guess it was. Yes, '03.
MR. ELLIS: Let the record reflect again there's no copies for me. I'll work with Mike here.
MR. ROBERTS: Not me Mike, that Mike.
A. This was made -- this was a note put on the word processor for me by me based upon my notes in examining him with the Warrington. I tried as best I

could to capture exactly what transpired.
Q. Okay. Have we now gone through all of the raw data that you created from your three visits with Mr. Jeffries?
A. It would seem so.
Q. Are you mindful of anything that we've not covered one way or the other today?
A. No, I'm not.
Q. We marked as Exhibit 82 your affidavit. And you are mindful that this affidavit would be submitted to Judge Beckwith or Judge Hogan for their consideration whether you could see Mr. Jeffries a third time; is that right?
A. Yeah.
Q. You say in paragraph 5, Mr. Jeffries will not be asked to retake identical tests, right?
A. Yeah.
Q. Okay.
A. I guess I changed my mind.
Q. Let's focus on your report. You still have it in front of you, 69?
A. For the record, the test that I did repeat was only the Trail Making test.
Q. What about the peg test?
A. And the -- you didn't let me finish.

Q. Oh, sorry.
A. The motor function and the Trails for a combined total time of approximately seven minutes.
Q. So what were the discrepancies that you attempted to reconcile? You told the court in the affidavit you needed to --
A. I think I mentioned them before, earlier in my testimony.
Q. Did you reconcile them?
A. Yes.
Q. How were they reconciled?
A. I think I can answer that without checking on the records. They were reconciled as follows: With regard to Mr. Jeffries' attention and concentration capacity, his scores fluctuate. They go down, they go up, depending upon the modality and depending upon other things which I was not able to ascertain.
And on other things which I believe have to do with Mr. Jeffries' personality, which I was not -- which were not related to neurogenic conditions, first thing.
With regard to his mental processing speed, again, his mental processing speed also varied. It varied from -- depending upon the modality of the test and the task that he was required to do, his mental

processing speed can be very fast and very accurate, or it can be very slow and very inefficient. I believe that that is a function of a neurogenic condition, not a -- pardon me, I misspoke. I believe that is a function of a psychogenic condition, not a neurogenic condition.
And thirdly, I believe that Mr. Jeffries' memory is poor and -- but not impaired. And that it is poor on the basis of behavioral factors, not on the basis of a neurological impairment of the central nervous system. And that is how the discrepancies were resolved.
Q. Okay. Could you read that back to me, please?
(The record was read.)
MR. ROBERTS: Thank you.
BY MR. ROBERTS:
Q. Dr. Hartings, do you recall the first time we spoke on the phone?
A. I suppose.
Q. Peter Burrell arranged for the opportunity for me to speak with you --
A. Yes, conference, right.
Q. -- when you wanted to take Mr. Jeffries' exam for a third occasion. Do you recall that?

Q. Okay. Tell me where I'm wrong.
A. There's another section that you don't have included here which is what I was basing it on.
Q. Which is what?
A. Somatization disorder undifferentiated.
Q. Well, I have the copy of 300.81.
A. If I can see the DSM, I'll show you what I mean.
Q. Okay. Counsel must have known you intended to do that because he asked for the DSM-IV a minute ago.
300.81 is what your report says, right?
A. Right.
Q. 300.81 is what I copied as Exhibit 80?
A. It's not here. I have a copy of it, but it's not here.
Q. Sir -- sir, pay attention.
A. Yeah.
Q. Your report says 300.81?
A. Right.
Q. I'm a lawyer, but we do have in our law firm this DSM-IV law book in our library.
A. Right.
Q. So I go to our library, I take the DSM-IV off the shelf. I say, Dr. Hartings says he has 300.81, so

I turn to page 46 of the DSM-IV and there I have 300.81.
A. Right.
Q. Did I do something wrong?
A. Yes.
Q. Okay. What did I do wrong?
A. If I can have a minute, I'll show you. The 300.81 that I used for the diagnosis is right there.
Q. You used -- you're handing me another page from your materials that I've not been provided earlier. I need to make a copy of that file, too, since we've pulled out a couple things that don't exist in the file that was given to me previously.
A. And the reason for that is that, as I said before, I continue to work on the file and things get added.
Q. Okay.
A. If you want a copy, you're most welcome.
Q. That would be wonderful.
You pulled this out and you highlighted this. What's the highlighting for on -- let's mark this.
A. It's to highlight the basis upon which I made the diagnosis of 300.81.
Q. Okay. This is going to be Exhibit 83.
MR. ROBERTS: Mr. Ellis, could I please have

my book back?
MR. ELLIS: You bet.
MR. ROBERTS: Great guy.
MR. ELLIS: I know.
Q. Okay. Now, my Exhibit 80 is copies of page 446, 447, 448, 449 and 450 of the DSM-IV?
A. Right.
Q. And we've marked as Exhibit 83 page 451 and 452 of the same book?
A. Apparently not.
Q. Well, mine goes 446 to 450. And it goes 300.81 to 300.82. Yours picks up at 451 and goes to 452. So it's not the same book?
A. Apparently not. I think this might help clarify --
Q. Okay.
A. -- the discrepancy. If you look here, 300.82, undifferentiated somatoform disorder. Apparently in some edition of the DSM-III, the powers that be increased this digit by one, but it's the same diagnosis.
Q. DSM-III?
A. Or IV, excuse me.
Q. You didn't clarify things for me. Your 301.4 here -- excuse me, your 300.81, your axis I diagnosis

on March 15 of 2003, that's not a 300.81 that's Exhibit 80?
A. No.
Q. You're talking about something else?
A. I'm talking about 300.81 that is in this book, which apparently is listed in your book as 300.82.
Q. You have a -- you are basing your report on a version of the DSM that predates the one that I've been using?
A. That I have in my office, yes.
Q. A prior edition to the one that I shared with you?
A. It's a DSM-IV. I don't know.
MR. ELLIS: It may be subsequent, Mike. I don't know whether it's DSM-IVR or what. There are multiple versions of that book.
A. Yes.
Q. You say in your report that it's somatization disorder, which is what my Exhibit 80 calls 300.81?
A. Right.
Q. You're saying your report should really say 300.82, undifferentiated somatoform disorder?
A. Well, yes.
Q. It's a different diagnosis to a different

number?
A. No, it's the same number. It's the same number in my book. It's a different kind of somatization disorder, and this is the one that Mr. Jeffries --
Q. But you don't say --
A. No, I didn't say it in there.
Q. You don't say undifferentiated somatoform disorder in your report?
A. I don't, no.
Q. You use the exact same terminology that corresponds with 300.81 in my book?
A. Okay. That's true.
Q. Have you changed your diagnosis since March 2003?
A. Not at all.
Q. So I just throw my Exhibit 80, 300.81, out? It doesn't mean anything in Mr. Jeffries' case?
A. 300.82 is the one that means something in Mr. Jeffries' case.
MR. ELLIS: In your book.
A. In your book.
Q. Okay. May I look at your --
A. Sure.
Q. Have you reviewed Dr. Shear's report prior to

today?
A. Several times.
Q. Okay. Have you spoken to Mr. Ellis about her report?
A. Once.
Q. Okay. Did you ever give him your written impressions of her report?
A. Yes.
Q. You know that she commented that your diagnosis of 300.81 is -- just can't be because Mr. Jeffries doesn't have any sexual symptoms, right? You're mindful of that criticism?
A. I know that's what she says, based upon her assumption of a DSM description that I didn't use. That's the one that describes Mr. Jeffries.
Q. Okay. She assumed that when you say he suffers from 300.81, as a psychologist you're up on the new versions of DSM-IV, and so when you write a report in March 2003 saying that a person has 300.81, another psychologist should reasonably rely on that to mean 300.81, the most recent version, right?
MR. ELLIS: Objection.
A. I can't be accountable for what she relies on or doesn't rely on.
Q. Well, she was more up to speed than you were,

sir?
A. That may be. She may have the latest, hottest, off-the-press version of DSM-IV TRR whatever.
Q. So she was mistaken, then, to take your report and read it for what it says and that is that you were diagnosing 300.81 when really you were diagnosing 300.82?
MR. ELLIS: Objection to form.
Q. Is that right?
A. I was diagnosing out of the manual I have in my office, 300.81 somatoform disorder, as described there and as fits Mr. Jeffries like a glove.
Q. Okay. What's the age of onset for this glove-fitting new diagnosis that you have?
A. Can be any time.
MR. ELLIS: Objection to form, new. Not what he testified.
MR. ROBERTS: Well, it's new to me as of about five minutes ago.
A. It specifically does not have to occur before the age of 30.
Q. That's convenient.
A. It's true, too.
MR. ELLIS: Objection to counsel's comments

and testimony.
Q. Sir, you would agree with me that the level of Mr. Jeffries' cognitive impairment would be shocking in someone that was suffering only from somato -- somatoform disorder, right?
A. No.
Q. Okay. Somatoform disorders are also -- don't exhibit themselves generally independent of some other disorder, true?
A. I don't understand your question.
Q. Is it normal for someone to have this type of significant cognitive impairment with just somatoform disorder without some other related disorder?
A. Is it normal, did you say?
Q. Is it common?
A. Common. It is not uncommon. I have seen many cases over the years where people suffering from somatoform disorder of one kind or another and who believe that they are very sick perform cognitively much worse than Mr. Jeffries --
Q. Somatoform --
A. -- without any medical findings that substantiate their medical illness.
Q. Okay. Somatoform disorder is something that is fairly uncommon on a percentagewise basis in our